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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ELLIOTT D. GOODIN,

8 Plaintiff,

9 v.

10 IKE (ROBERT) VERCOE,

11 Defendant.

NO: 2:18-CV-0392-TOR

ORDER DENYING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

12
13 BEFORE THE COURT is Plaintiff's construed Motion for Temporary
14 Restraining Order (ECF No. 15). Also before the Court are Defendant's Motion
15 for Order to Produce Medical and/or Mental Health Records of Elliot Goodin and
16 Enter a Protective Order (ECF No. 16) and Motion to Expedite (ECF No. 17).
17 These matters were heard without oral argument. The Court has reviewed the
18 record and files herein, and is fully informed. For reasons discussed below, the
19 Court **DENIES** Plaintiff's Motion for Temporary Restraining Order (ECF No. 15).
20 Defendant's Motion for Order to Produce Medical and/or Mental Health Records

ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER ~ 1

1 and Enter a Protective Order (ECF No. 16) and Motion to Expedite (ECF No. 17)
2 are **DENIED as moot**.

3 **BACKGROUND**

4 Plaintiff Elliott D. Goodin, proceeding *pro se* and *in forma pauperis*, brings
5 suit against Defendant Ike (Robert) Vercoe (“Vercoe”). Plaintiff is a patient at
6 Eastern State Hospital, and Defendant Vercoe is an employee of Eastern State
7 Hospital. ECF No. 1 at 2-3. Plaintiff’s Complaint alleges that on November 12,
8 2018, Plaintiff was asked to go to the seclusion room at Eastern State Hospital
9 because another patient was cursing at Plaintiff. ECF No. 1 at 4, 6. Plaintiff went
10 to seclusion room voluntarily. *Id.* Plaintiff alleges that, once in the seclusion
11 room, he was assaulted by Defendant Vercoe. *Id.* Plaintiff claims that Defendant
12 Vercoe broke Plaintiff’s hand and slammed his head onto the concrete floor during
13 the assault. *Id.* at 4-6. Plaintiff has provided copies of the ex-rays taken of his
14 hand after the incident, which confirm that he had two broken knuckles and a
15 chipped bone in his hand. *See id.* at 4-5, 7; ECF No. 1-1 at 2-6. Asserting a cause
16 of action under 42 U.S.C. § 1983, Plaintiff alleges that Defendant Vercoe
17 physically assaulted Plaintiff in the seclusion room at Eastern State Hospital on
18 November 12, 2018. Plaintiff seeks damages for the injuries he sustained during
19 the alleged assault.

1 Defendant Vercoe denies that he committed any assault or alleged
2 inappropriate behavior and contends Plaintiff was physically assaultive toward
3 Eastern State Hospital staff and was banging himself on the door and windows of
4 the seclusion room. ECF No. 10.

5 On June 14, 2019, the Court received a letter from Plaintiff, which the Court
6 has construed as a motion for a temporary restraining order (“TRO”). ECF No. 15.
7 In response to Plaintiff’s motion, Defendant Vercoe moved the Court to issue an
8 order requiring the production of certain medical and/or mental health records of
9 Plaintiff and to enter a protective order relating to those records. ECF No. 16. As
10 he explains in the motion, Defendant Vercoe requests the records “because they are
11 relevant to the matters and issues raised in this litigation and/or may lead to
12 discoverable material, and they are necessary to address [Plaintiff’s] request for a
13 temporary restraining order.” *Id.* at 1.

14 DISCUSSION

15 A. Plaintiff’s Motion for TRO

16 In the pending motion, Plaintiff alleges that Defendant Vercoe has been
17 harassing him at Eastern State Hospital and seeks “a temporary restraining order of
18 500 yards until the trial” to prevent further harassment. ECF No. 15.

19 A preliminary injunction is an “extraordinary and drastic remedy.” *Munaf v.*
20 *Geren*, 553 U.S. 674, 689 (2008). To obtain injunctive relief under Rule 65, a

1 plaintiff must make a “clear showing” of: (1) a likelihood of success on the merits;
2 (2) a likelihood of irreparable injury in the absence of preliminary relief; (3) that a
3 balancing of the hardships weighs in plaintiff’s favor; and (4) that a preliminary
4 injunction will advance the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
5 555 U.S. 7, 20, 22 (2008); *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).
6 Under the *Winter* test, a plaintiff must satisfy each element for injunctive relief.
7 Alternatively, the Ninth Circuit also permits a “sliding scale” approach under
8 which an injunction may be issued if there are “serious questions going to the
9 merits” and “the balance of hardships tips sharply in the plaintiff’s favor,”
10 assuming the plaintiff also satisfies the two other *Winter* factors. *All. for the Wild*
11 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“[A] stronger showing of
12 one element may offset a weaker showing of another.”); *see also Farris v.*
13 *Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (internal quotation marks and citation
14 omitted).

15 Here, the Court denies Plaintiff’s motion for a TRO for two reasons. First,
16 the Court lacks jurisdiction to grant the specific relief requested by Plaintiff.
17 While the Court has jurisdiction over Defendant Vercoe, as the sole named
18 defendant in this action, the Court has no jurisdiction to restrain or enjoin non-
19 parties, such as Defendant Vercoe’s employer, the State of Washington. However,
20 the relief Plaintiff seeks—a TRO requiring Defendant Vercoe to remain 500 yards

1 away from Plaintiff until trial—would effectively bind the State of Washington
2 because Defendant Vercoe is state employee. The Court simply lacks jurisdiction
3 to restrain the State of Washington in this way. Second, Plaintiff fails to establish,
4 let alone discuss, any of the *Winter* factors in his motion. The Court will not make
5 the requisite *Winter* arguments on Plaintiff's behalf. For these reasons, the Court
6 denies Plaintiff's Motion for TRO. ECF No. 15.

7 Having denied Plaintiff's motion, the Court also denies as moot Defendant
8 Vercoe's related motion for medical and/or mental health records and a protective
9 order (ECF No. 16) and his motion to expedite (ECF No. 17).

10 **ACCORDINGLY, IT IS ORDERED:**

11 1. Plaintiff's Motion for Temporary Restraining Order (ECF No. 15) is


12 **DENIED.**

13 2. Defendant Vercoe's Motion for Order to Produce Medical and/or Mental
14 Health Records of Elliot Goodin and Enter a Protective Order (ECF No.
15 16) and Motion to Expedite (ECF No. 17) are **DENIED as moot.**

16 The District Court Clerk is directed to enter this Order and provide copies to
17 the parties.

18 **DATED** June 28, 2019.




THOMAS O. RICE
Chief United States District Judge